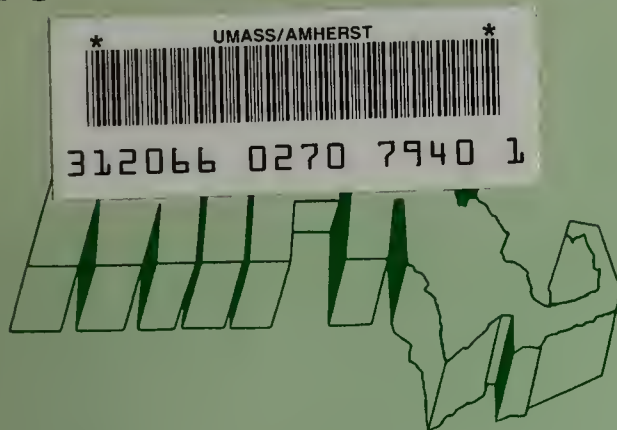


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**MASSACHUSETTS INDUSTRIAL FINANCE AGENCY**

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**AN INTRODUCTION TO  
THE INDUSTRIAL REVENUE BOND INCENTIVE PROGRAM  
OF THE  
MASSACHUSETTS INDUSTRIAL FINANCE AGENCY**

793/238

JANUARY 1979

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## THE AGENCY

The Massachusetts Industrial Finance Agency (MIFA) was created as an independent public agency in the Fall of 1978 pursuant to Chapter 496 of the Acts of 1978. This bill and a companion bill, Chapter 495, made several important changes in the state's tax-exempt revenue bond program:

1. The statute governing the program was extensively rewritten and modernized. Among other changes, leased properties were included, and commercial properties (such as offices, hotels, retail stores) were included if they are located in certain central areas of the state's cities and largest towns;
2. The availability of industrial revenue bond financing was extended to all geographic areas of the state, as MIFA was empowered to issue industrial revenue bonds on a state-wide basis;
3. The functions of the State Industrial Finance Board to make the statutory findings required for all industrial revenue bonds were transferred to MIFA;
4. MIFA was empowered to combine individual bond offerings into consolidated issues, thereby permitting Massachusetts to participate in the Small Business Administration's new 100% guaranty program of tax-exempt financing for pollution control equipment for SBA-eligible companies.

MIFA is governed by a board of directors consisting of nine members, six of whom are appointed by the Governor from the private sector and three of whom are public officials. The legislation requires the directors to make certain specific findings before approving the issuance of any tax-exempt industrial revenue bond issued by MIFA or a local industrial development financing authority.

The Massachusetts Industrial Finance Agency was established to promote industrial growth and economic development throughout Massachusetts. MIFA seeks to work closely with local government officials, lenders and

businesses to increase use of the state's tax-exempt financing and insured mortgage incentive programs. These programs can lower both the costs of borrowing and the risks of lending, thereby stimulating more of the private investment in productive plants and equipment and revitalized commercial centers which is so essential to building more jobs and a strengthened economic base in Massachusetts.

#### THE INDUSTRIAL REVENUE BOND

The Internal Revenue Code exempts from taxation the income from certain industrial revenue bonds issued by a public instrumentality. Because the interest on these bonds is exempt from federal taxation, lenders are willing to provide this type of financing on more favorable terms than offered on conventional loans. In order to qualify for tax-exempt industrial revenue bond financing, a project must meet the requirements of the federal Internal Revenue Code, the Internal Revenue Service's regulations and rulings, and the enabling state law (Massachusetts General Laws, Chapter 40D). Most of these financings are in essence real estate or equipment loans made by one or several participating lenders to the user of the project, and the term "tax-exempt mortgage" may describe the substance of these financings as accurately as the term "industrial revenue bond".

In Massachusetts, tax-exempt industrial revenue bonds can now be issued by MIFA or locally-established industrial development financing authorities. Repayment of principal and interest on the bonds is the obligation of the user of the project to be financed. As the credit of neither MIFA, the Commonwealth, nor any municipality will be pledged to repay the bonds, the actual interest, maturity and other terms of the financing are determined by negotiations between the lender and the user of the project. In essence, the industrial revenue bond is simply a loan which can acquire tax-exempt treatment through the participation of MIFA



or a local industrial development financing authority. However, that participation by MIFA or a local authority provides no assurances that the loan will be repaid by the borrower, and lenders should investigate the proposed project and assess the risks of the loan consistent with their usual lending policies.

If a lender requires additional security, repayment of a portion of the loan may be insured by MIFA. Borrowers or lenders wishing to explore the insurance of industrial revenue bonds should consult MIFA's "An Introduction to the Industrial Mortgage Insurance Incentive Program". The provisions of MIFA's regular mortgage insurance program apply to requests for insurance of revenue bonds, and a consolidated application can be used for a single project under both programs. (Insured revenue bonds are limited to 90% of a project's value.)

Tax-exempt revenue bond financings can be structured in a variety of ways, such as unsecured loans, mortgage loans, leases leveraged leases, or installment sales. Legal title to the project to be financed can be held by the issuing public agency (MIFA or the local industrial development financing authority), by the user of the project, or by another entity. Payments of principal, interest or rent are assigned by the issuing public agency to a Massachusetts trustee, who receives these payments for the benefit of one or more lenders.

As the principal benefit of industrial revenue bonds derives from their tax-exempt status, great care must be taken to comply with the requirements of state and federal law and of the Internal Revenue Service. For example, proceeds must be used for land or depreciable property, and the size of a project eligible for tax-exempt financing is controlled by

the Internal Revenue Code as follows:

1. When the bond issue is over \$1,000,000, total expenditures which could be capitalized (including the bond issue proceeds) by the Borrower within the same municipality cannot exceed \$10,000,000 over a six-year period (three years before and three years after the bond date);
2. When the bond issue is \$1,000,000 or less, the above total capital expenditures restriction does not apply;
3. When the bond issue is for pollution control, solid or liquid waste disposal, or certain other exempt facilities, there is no limit on the size of the bond issue or capital expenditures;
4. When the issue is for a project that involves an Urban Development Action Grant from the U.S. Department of Housing and Urban Development, the maximum capital expenditures limit will be raised to \$20,000,000\*, but only \$10,000,000 of the bond issue will be tax-exempt.

(\*Effective September 30, 1979)

Massachusetts law allows up to 100% of an eligible project's costs to be financed with maturities up to 50 years. (See "The Project" below for a discussion of eligible projects.)

The statute states that the term of the loan may not exceed the useful life of the project to be financed, and that amortization must commence within three years following completion of the project. A later commencement of amortization and a term longer than the useful life may be approved by MIFA. Once amortization has commenced, however, the principal amount to be amortized in any year plus interest to come due in that year may not exceed two and one-half times the amount of principal and interest coming due in any earlier year in which principal is required to be amortized. This restriction on amortization applies to the final principal payment upon maturity as well as to regular amortization payments. However, provisions for an acceleration of the loan prior to maturity, for example under a provision for an interest rate adjustment, are permitted.

Many other technical requirements must be met if the financing is to be tax-exempt, and MIFA cannot be responsible for legal or financial advice to borrowers or lenders. The approval or issuance by MIFA of a bond issue provides no assurance that the project or the borrower is financially sound, that the collateral pledged to secure the loan would be sufficient to repay the lender upon a foreclosure, or that the loan is likely to be repaid. Nor does the participation of MIFA or a local industrial development financing authority assure that the interest on the bonds will be exempt from taxation. Therefore lenders must undertake their own credit analysis consistent with their usual lending policies, and it is critical that competent counsel familiar with industrial revenue bonds be consulted before any part of a project is commenced or any expenditures committed. As the lender will have to rely on bond counsel for assurances that interest on the loan will be tax-exempt, bond counsel must be acceptable to the lender.

While it is the ultimate responsibility of the borrower to obtain a lender, upon request MIFA will provide assistance and guidance in arranging financing. Although some bond issues have been sold publicly with the aid of an investment banker, public sales require substantial additional documentation and higher legal and other closing costs and therefore are attractive only for large issues. In practice most bonds in Massachusetts have been privately placed with commercial banks or insurance companies selected by the borrower. A 1978 amendment to the Massachusetts banking laws now permits savings banks to more actively purchase industrial revenue bonds.



MIFA's board of directors generally requires that companies must submit audited financial statements to MIFA prior to its approval of a tax-exempt revenue bond issue. Financial information will be disclosed to MIFA's board members but is specifically exempted under MIFA's enabling act from the requirement of public disclosure of public records.

#### THE PROJECT

Under Massachusetts law, the proceeds of industrial revenue bonds must be used for the construction, acquisition, equipping or improvement of "industrial development facilities", "pollution control facilities", or "solid waste disposal facilities" anywhere in Massachusetts.

"Industrial development facilities" are broadly defined to include the facilities of any industrial or research and development enterprise. Buildings, docks, wharves, ships, land, machinery, equipment, franchises, furnishings, landscaping, utilities, roadways are all eligible, as are other facilities necessary or desirable in connection with an industrial or research and development enterprise, such as office, warehouse, terminal, transportation and back-up power generating facilities.

"Industrial enterprise" includes "applying skill and labor to the giving of new shapes, new qualities or new combinations to matter as material products or the assembly, processing, preservation, storage, handling or transportation of manufactured or natural products". Commercial properties, such as offices, hotels, retail stores, parking garages, and the rental of facilities to non-profit organizations, are also eligible if they are



located in any city or in a town with a population over 35,000 and within the boundaries of a "commercial area revitalization district" as delineated in a revitalization plan adopted by the city or town's governing body and approved by the state's Secretary of Communities and Development.

"Pollution control facilities" include facilities for the prevention, avoidance, reduction, control, elimination, or monitoring of pollution of air or water by industrial enterprises, public utilities or others.

"Solid waste disposal facilities" include not only the more conventional facilities for disposal of refuse, garbage and waste, but also facilities used to manufacture electricity or steam primarily from solid waste.

If the facility to be financed meets one of these definitions, revenue bonds can be used for such parts of the project as acquisition, land, new construction, additions to or renovations of existing buildings, or furnishings or equipment for a new or existing building. The acquisition of land or depreciable assets of an existing business may also qualify. Bond proceeds may be used to finance a broad range of the costs of an eligible project, such as interest, insurance, taxes and other expenses during construction, architectural and engineering fees, and closing costs of the bond issue.

Bond proceeds may also be disbursed periodically to finance the construction of an eligible project or to refund advances during construction made by the borrower, bond purchaser, or another lender. However, the refinancing of prior, permanent, non-tax-exempt financing does not qualify for tax-exempt status. And the proceeds of tax-exempt bonds may not be used to provide working capital or to finance non-depreciable assets, such as inventory or accounts receivable.

All or part of the costs of a project may be disqualified from reimbursement out of bond proceeds if commenced prior to initial approval of the project by the public agency which will issue the bonds. Therefore it is important to contact the public agency before any commitments are made for the project. (See "The Procedure" below.)

Costs of closing an industrial revenue bond are often somewhat higher than for conventional loans. There is no minimum size limit on an industrial revenue bond, but in general, projects seeking financing of less than \$200,000 may not find the interest savings of the tax-exempt status to be sufficient to offset the higher closing costs.

Although the income on the bonds may be exempt from federal and state taxation, the project will not be exempt from local property taxes. Projects will also be subject to zoning, building and subdivision laws.

#### THE BORROWER

The eligible industrial or commercial enterprise to use the project need not be the owner of the real estate and/or equipment to be financed with the bond proceeds. A real estate developer, trust, partnership or other entity may be involved in the financing provided that the use and occupancy of the facility or equipment being financed is devoted to a use eligible under the Internal Revenue Code and Massachusetts law, and provided that the benefits of the lower interest rate resulting from the tax exemption are transferred to the eligible enterprise.

## THE PROCEDURE

1. Persons wishing to determine whether industrial revenue bond financing is feasible for their project are urged to contact the MIFA staff for assistance. MIFA will also be pleased to assist a potential applicant in determining whether there is a local industrial development financing authority in the community where the project is proposed to be located.
2. MIFA will contact the appropriate local government officials and inform them of the proposed project. In communities with an industrial development financing authority, MIFA will contact the chairman of the authority; in all others, MIFA will contact the mayor or board of selectmen.
3. If the project is to be located in a community which has an industrial development financing authority, it must be determined whether the authority desires to issue the bonds.

4. If MIFA is to issue the bonds:

- a. A Project Information Statement should be filed with MIFA as soon as possible.
- b. MIFA must vote to approve the project and the financing. (Where the project is located in a municipality with a local authority, the authority must first vote to request MIFA to undertake the financing.)

NOTE: Steps (a) and (b) must be taken before any commitments for the project are undertaken by the applicant.

- c. When the financing documents have been prepared by legal counsel and approved by the lender and MIFA, MIFA will schedule the project for its next board of directors meeting. After MIFA votes to approve the financing documents and the project as consistent with the statutory findings required in Massachusetts General Laws Chapter 40D, and to issue the bonds, the Certificate of Convenience and Necessity will be issued by the Commissioner of Commerce and Development. Immediately thereafter, the bonds may be issued and the bond proceeds distributed.

5. If the local industrial development financing authority is to issue the bonds:

MIFA will refer the applicant to the authority for compliance with the authority's procedures. If requested, MIFA will assist the authority and the applicant to expedite the issuance of the bonds. Procedures and forms may vary between authorities, but generally the procedural steps to be taken include:

- a. Filing of an application with the authority. Authorities determine their own application forms, but MIFA's Project Information Statements are available to any authority wishing to use them. (MIFA also encourages early filing of a Project Information Statement with MIFA to expedite scheduling of MIFA's approval of the bond issue as described in (e) below.)



- b. The authority must vote to approve the project and the proposed financing.
- c. The governing body of the municipality (city council plus the mayor or city manager, or board of selectmen) must vote to approve the project and the financing.

NOTE: Steps (a), (b) and (c) must be taken before any commitments for the project are undertaken by the applicant.

- d. When the financing documents have been prepared by legal counsel and approved by the lender, the authority must vote to approve the financing documents and to issue the bonds, and to file an Application for a Certificate of Convenience and Necessity with MIFA.
  - e. The financing documents and the Application for a Certificate of Convenience and Necessity are forwarded to MIFA for approval after they have been approved by vote of the authority. MIFA will schedule the bond issue for action at the earliest possible MIFA board of directors meeting, provided that the materials and the request for MIFA action is received at least two weeks prior to the scheduled board meeting. (MIFA board meetings are generally held on the first Thursday of each month.)
  - f. After MIFA votes to approve the bonds as consistent with the statutory findings required in Massachusetts General Laws Chapter 40D, the Commissioner of Commerce and Development will issue the Certificate. Immediately thereafter, the bonds may be issued and the bond proceeds distributed.
6. Environmental clearance: In general the participation of MIFA in a financing will not subject a project to the requirements of the Massachusetts Environmental Policy Act. Certain extremely large projects as noted in the Project Information Statement may require environmental clearance. Unless a project falls within the specific criteria requiring environmental clearance described in the Project Information Statement, MIFA's participation will not require the filing of an Environmental Notification Form or the preparation of an Environmental Impact Report. (If other state permits are required, these other permits may require compliance with MEPA.)
7. MIFA and local industrial development financing authorities do not give legal advice. MIFA will require the participation of bond counsel who will be called upon to satisfy the lender that the benefits of industrial revenue bond financing, i.e., the exemption from income tax on the interest, will be available to the lender.



THE PROCESSING FEES

Since operating expenses of MIFA should be supported from the fees charged to borrowers benefitting from the program, the following fees are to be paid at the time of the issuance of the Certificate of Convenience and Necessity:

<u>Bond Amount</u>	<u>Fee</u>
1. up to \$1,000,000	1/4% of bond amount; minimum \$500.
2. over \$1,000,000	\$2,500 plus 1/10% of bond amount over \$1,000,000

In addition, when MIFA is the bond issuer a \$200 fee will be due at the time of the vote of the board of directors to first approve the project and a \$250 closing fee will be due at the time of the execution and delivery of the bonds.

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If you are interested in further assistance, forms or information regarding the revenue bond program, give us a call at 617-723-4242.





